

REMARKS

Applicant submits the definitions of the words “stud” and “post” as set forth in the attached exhibits. Generally, the definitions are available online at the sites indicated at the bottom of each exhibit and many of the definitions may be easily found at the site www.onelook.com. This evidence was not previously presented as, until the final Office Action dated November 28, 2007, the Examiner had not indicated that the general definition for these words would be used as opposed to the definition of these words as used by those skilled in the art of construction.

It is noted that the Examiner contends that a “post” is “a piece of wood or metal, etc., usually long and square or cylindrical, set upright to support a building, sign, grate, etc: pillar or pole ...” and that a “stud” is “column, pillar, post ... to prop, support...” The Examiner further notes that the claims must be given the broadest reasonable interpretation. Applicant agrees with the Examiner’s statement of the law, but not the application thereof.

As set forth at MPEP §2111, “Claims are not to be read in a vacuum, and limitations therein are to be interpreted in light of the specification in giving them their ‘broadest reasonable interpretation’.” *Citing, In re Marosi*, 710 F.2d 799, 802, 218 USPQ 289, 292 (quoting *In re Okuzawa*, 537 F.2d 545, 548, 190 USPQ 464, 466 (CCPA 1976)) (emphasis in original). However, it is further noted that, “[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313, 75 USPQ2d 1321, 1326 (Fed. Cir. 2005) (*en banc*). Further, in construing claim terms, the general meanings gleaned from reference sources, such as dictionaries, must always be compared against the use of the terms in context, and the intrinsic record must always be consulted to identify **which of the different possible dictionary meanings is most consistent with the use of the words by the inventor.** *ACTV, Inc. v. The Walt Disney Company*, 346 F.3d 1082, 1092, 68 USPQ2d 1516, 1524 (Fed. Cir. 2003). Thus, **if extrinsic reference sources, such as dictionaries, evidence more than one definition for the term, the**

intrinsic record must be consulted to identify which of the different possible definitions is most consistent with applicant's use of the terms. *Brookhill-Wilk I v. Intuitive Surgical, Inc.*, 334 F. 1294, 1300, 67 USPQ2d 1132,1137.

In this application, the Examiner has utilized one of several dictionary definitions without regard to the subject matter of the application. That is, the Examiner has recited a dictionary definition that may be used by a typical “person in the street” rather than the definition used by those skilled in the art of construction. As set forth in the previously submitted Affidavit of Robert Delorenzo (copy submitted with the Response filed October 5, 2006), those skilled in the art of construction have specific definitions of the words “stud” and “post” that are more narrow than the general definition. This distinction is also noted in the attached definition of the word “post” from the dictionary Encarta. That is, Encarta notes a general definition of a “post” as “upright pole: a pole of wood or metal fixed in the ground in an upright position, serving as a support, marker, or place for attaching things.” This definition is generally consistent with the definition provided by the Examiner. However, Encarta further notes that in the field of “construction” the word “post” has a more specific definition, “construction upright frame part: a vertical piece in a building frame that supports a beam.” The latter definition, *i.e.* the one relating to construction, just as the present application relates to construction, is consistent with the definition provided by Robert Delorenzo. Accordingly, the Examiner has failed to look to **“the intrinsic record... to identify which of the different possible definitions is most consistent with applicant's use of the terms.”**

This definition, as well as the others, shall be used in the Appeal Brief to demonstrate that the Examiner’s use of general definitions without regard to the context of the present application is in error and violates the law as set forth in, *inter alia*, *Brookhill-Wilk I*.


A Notice of Appeal is filed concurrently herewith.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Jenkins', written over the text 'Respectfully submitted,'.

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post (1)

 post (1)

post [pōst]

noun (*plural* posts)

Definition:

- upright pole: a pole of wood or metal fixed in the ground in an upright position, serving as a support, marker, or place for attaching things
- CONSTRUCTION upright frame part: a vertical piece in a building frame that supports a beam
- HORSE RACING racecourse indicator: either of two upright poles marking the starting point and finishing line on a racecourse

4. furniture support: one of the upright supports of a piece of furniture such as a chair or a four-poster bed

5. SPORTS (*informal*)
Same as goalpost

6. JEWELLERY earring part: a metal stem on a pierced earring that passes through the ear and fits into a cap at the back

7. ONLINE
Same as posting¹ (sense 1)

transitive verb (*past and past participle*

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post-ed, *present participle* post-ing, *3rd person present singular* posts)

Definition:

1. **display something:** to display something such as an announcement, name, or result in a public place
2. **publish something electronically:** to make text appear online or at an Internet location
3. *U.S.* **erect signs forbidding something:** to put up signs around a property warning against trespassing or engaging in a forbidden activity
4. *U.S.* **denounce publicly:** to denounce somebody by displaying damaging information publicly (*dated*)
5. **LEISURE score points:** to score something, e.g. points, in a game or sport
 - *posted a win in his first game of the season*
6. **give notice of marriage:** to announce a forthcoming marriage in a church
 - *post the banns*
7. **NAUTICAL name ship:** to publish the name of a ship presumed lost or sunk

[Pre-12th century. < Latin *postis* "something that stands in front" < Indo-European, "to stand"]



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stud (2)

stud [stud]

noun (*plural* studs)

Definition:

1. **DRESS fastener for shirt:** a fastener for dress shirts or collars consisting of a small disk attached to a short rod

2. **AUTOMOTIVE projection on tire:** a small metal point embedded in the surface of a tire for better traction on snow and ice

3. **metal knob:** a small metal knob, rivet, or nail head that protrudes slightly from a surface, especially for decorative effect

4. **JEWELLERY earring:** an earring for pierced ears that has a simple rounded head or is set with a single gemstone

5. **CONSTRUCTION vertical support:** a vertical length of lumber to which material such as lath or plasterboard is attached in constructing a wall

6. **TOOLS headless bolt:** a headless bolt that is smooth in the center and threaded at each end

7. **ENGINEERING protrusion on machine:** a projecting pin on a machine that serves as a support

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transitive verb (*past and past participle*
stud-ded, *present participle* stud-ding, *3rd*
person present singular studs)

Definition:

1. **supply something with studs:** to fit or decorate something with studs
 - *a studded leather jacket*
2. **occur throughout something:** to be present or visible throughout something
 - *a star-studded cast*

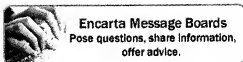
[Old English *studu* < W Germanic]

studded with scattered or dotted with something



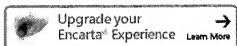
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
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☐ post[4,verb]

☐ post[5,adverb]

☐ post[6,noun]

☐ post[7,transitive verb]

☐ post-

☐ ante-post

Main Entry: **'post 4'**

Pronunciation: \ˈpɒst/

Function: *noun*

Etymology: Middle English, from Old English, from Latin *postis*; probably akin to Latin *por-* forward and to Latin *stare* to stand — more at **PORTEND, STAND**

Date: before 12th century

- 1 : a piece (as of timber or metal) fixed firmly in an upright position especially as a stay or support : **PILLAR, COLUMN**
- 2 : a pole or stake set up to mark or indicate something; *especially* : a pole that marks the starting or finishing point of a horse race
- 3 : a metallic fitting attached to an electrical device (as a storage battery) for convenience in making connections
- 4 a : **GOALPOST** b : a football passing play in which the receiver runs downfield before turning towards the middle of the field
- 5 : the metal stem of a pierced earring

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Main Entry: ***stud**

Function: *noun*

Eymology: Middle English *stode*, from Old English *studu*, akin to Middle High German *stud* prop, Old Norse *stoth* post

Date: before 12th century

1 a : one of the smaller uprights in the framing of the walls of a building to which sheathing, paneling, or laths are fastened : **SCANTLING** **b :** height from floor to ceiling

2 a : a boss, rivet, or nail with a large head used (as on a shield or belt) for ornament or protection **b :** a solid button with a shank or eye on the back inserted (as through an eyelet in a garment) as a fastener or ornament **c :** a small button-like ornament with a post for inserting through a body part (as the earlobe or nostril) and into a clasp

3 a : any of various infixed pieces (as a rod or pin) projecting from a machine and serving chiefly as a support or axis **b :** one of the metal or rubber cleats projecting from a snow tire to increase traction

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Stud

- any vertical **timber** in a timber-framed wall or cross frame other than the main or intermediate posts.

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